

OPENING STATEMENT  
OF  
DAVID J. HAYES, ACTING DEPUTY SECRETARY OF THE INTERIOR,  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS,  
ON S. 438,  
"THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION  
INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999"

JUNE 30,1999

Good morning Mr. Chairman and members of the Committee. I am David J. Hayes, Acting Deputy Secretary of the Interior. It is my pleasure to be here today to testify on behalf of the Administration in support of S. 438. This bill represents the successful culmination of over eight years of negotiation among the United States, the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Reservation over water rights disputes being litigated in the case entitled, In the Matter of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana. It represents a true partnership among Federal, State and Tribal interests. Through a great deal of hard work, the parties have forged a water rights settlement that satisfies Tribal rights and needs, while also taking into account the rights and needs of non-Indian neighbors, and enabling all affected Montanans to plan for the future with confidence and certainty. As you know, similar legislation to ratify this agreement was introduced in both the Senate and the House last year. However, a packed legislative calendar and a few eleventh-hour hurdles prevented the legislation from moving. We have worked closely with the State and the Tribe to address the questions that have come from the Hill and, believing that the concerns voiced have been satisfied, we are again here before this Committee seeking your support for this important legislation.

The Rocky Boy's Reservation, located in North Central Montana, consists of approximately 110,000 acres and includes several tributaries of the Milk River. The average annual water supply on the Reservation is limited by hydrological delivery constraints and inadequate storage

infrastructure. The Tribe has over 3,500 enrolled members and a population growth rate well above the typical rate for tribes of 3%. Tribal unemployment averages around 60-70% in an economy based primarily on agriculture, including raising livestock. Existing Reservation water use includes irrigation, livestock consumption, wildlife and recreational use, and municipal and industrial uses. The Tribe's municipal water is derived from 12 community wells and approximately 240 individual wells. A majority of the domestic wells suffer from low production due to aquifer overdraft or improper siting. In addition, groundwater contamination from hydrogen sulfide, iron and manganese contributes to well casing corrosion and makes the water very unpleasant to drink or use for other domestic needs.

Since the Tribal economy is heavily based on livestock and hay is the principal crop grown using irrigation, the Tribe's goal is to maintain, or perhaps slightly increase, the current level of irrigated agriculture on the Reservation in order to avoid having to purchase supplemental livestock forage on a regular basis. Without enhanced on-Reservation storage and other infrastructure improvements, experts calculate that, within 20 to 40 years, the Tribe will be unable both to maintain its modest agricultural base and meet the domestic water needs of its rapidly growing population.

The United States, the State and the Tribe struggled for many years to find an immediate solution to the problem of an inadequate Reservation water supply. For a time, the Tribe viewed the only solution to be the importation of water from the Tiber Reservoir, a Bureau of Reclamation facility some 50 miles from the Reservation. In this context, the water would have been delivered to the Tribe as part of a combined Indian/Non-Indian system. This system would have been very expensive and would have required an extensive Federal subsidy. Moreover, this system would have cost the Federal government far more than it could reasonably be expected to pay to settle the Tribe's water rights. Rather than pursue this expensive

regional water system, the parties decided to focus on developing existing Reservation water supplies and setting aside funds that will be available for use in a future plan to supplement on-Reservation water supplies. This is the approach that has been adopted in S. 438.

Under the terms of S. 438, Congress would approve, and authorize participation in, a Water Rights Compact entered into by the Tribe and the State. The Compact was enacted into Montana law on April 14, 1997, and recognizes the Tribe's right to approximately 10,000 acre feet of water on the Reservation. In order to enable the Tribe to exercise its on-Reservation water right, the United States would contribute \$24 million for four specific on-Reservation water development projects and additional funds of no more than \$1 million to cover Bureau of Reclamation (BOR) administrative costs associated with these construction activities. First and foremost among the projects is the repair and enlargement of Bonneau Reservoir, a facility that has ranked in the top ten of the Department's ranking list of most dangerous dams. Other projects include repair and enlargement of several smaller on-Reservation irrigation and recreational dams, including East Fork, Brown's and Towe's Pond dams.

S.438 also addresses the Tribe's future water needs by providing the Tribe with the right to an additional 10,000 AF of water stored in Tiber Reservoir. This allocation is only a small percentage of the 967,319 acre feet of water stored in Tiber Reservoir and will not impact on any other use of the Reservoir. The Department has carefully considered the impact of the allocation on the reserved water rights of other Indian tribes and has concluded that such rights will not be negatively affected.

It is important to note that by making the Tiber Reservoir allocation, the United States is not undertaking any obligation to deliver water to the Reservation. Section 8(d) of the bill expressly provides that the United States shall have no responsibility or obligation to deliver the Tiber allocation or any other supplemental water to the Reservation.

Nonetheless, in order to assist the Tribe when the time comes that it needs additional on-Reservation water supplies, S. 438 provides that the United States will set aside \$15 million in trust toward the planning, design, construction, operation, maintenance and rehabilitation of a future Reservation water

supply system. In addition, the bill authorizes BOR feasibility studies totaling \$4 million to explore alternative methods of augmenting the Rocky Boy's Reservation water supply, as well as analyzing region-wide Milk River water availability and enhancement opportunities. One particular alternative that will be studied will be the feasibility of releasing the Tribe's proposed Tiber Reservoir allocation into the Missouri River for later diversion into a treatment and delivery system for the Reservation. We are hopeful that this alternative or others identified by the BOR studies will prove to be more realistic and reasonable solutions than an expensive rural water supply system centered upon a pipeline from Tiber Reservoir. The BOR studies should provide an in-depth understanding of the Milk River Basin water supply, its potential and limitations, that will be of valuable assistance to the United States, the State of Montana and Montana Indian tribes in our efforts to address Indian water rights disputes. The studies will address, as well, some of the water supply problems facing many small North Central Montana communities.

Other components of the Chippewa Cree settlement include a \$3 million Tribal Compact Administration fund to help defray the Tribe's Compact participation costs and a modest \$3 million Tribal Economic Development fund to assist the Tribe in putting its water to use.

The total federal contribution to the settlement is \$50 million. We believe that this expenditure is appropriate and justified. The Tribe has presented the United States with a legal analysis setting forth a substantial damages claim against the United States. The Department of Justice and the Department of the Interior have analyzed the claim and concluded that settlement is appropriate. In addition to releasing the United States from damage claims, the settlement also will relieve the United States of the obligation to litigate, at significant cost and over many years, the Tribe's water rights. The certainty secured by the settlement is, in fact, its central feature. By resolving the Tribe's water rights, all of the citizens of this area of the State of Montana will be able to plan and make investments for the future with the assurance that they have secure and stable water rights.

Like other Indian water rights settlements, the benefits to accrue to the Tribe and other settlement parties will be available only after a final water rights decree is issued by the appropriate court. We expect

that the process of entering and gaining final approval of the decree will take approximately eighteen months to two years. As motivation to keep the court approval process moving, the settlement parties have established a three year deadline for finalization of the decree. The Department of the Interior is committed to advancing the court process and other settlement implementation tasks as expeditiously as possible in order to avoid having to seek Congressional relief from the settlement deadline. The Chippewa Cree Tribe has waited many years to see its water rights become a reality and we do not want to see that wait prolonged any more than is absolutely necessary.

As I mentioned at the beginning of my statement, legislation to ratify this settlement was introduced last year, but was not passed. As the State and the Tribe will testify, this settlement is broadly supported within Montana, particularly by Governor Racicot and the State Legislature, who are on record as strongly supporting the settlement. Moreover, appreciating the value and importance of such agreements, the Western Governors Association passed a resolution (98-029, June 30, 1998) reiterating its support for negotiated settlements of Indian land and water claims, lauding recent progress, adding that "the need to resolve these disputes and redress tribal grievances [through settlements] is critical."

S.438 presents an opportunity for the United States to ratify its first Western water settlement since the early 1990's and the Administration strongly supports this bill. I hope that the members of this Committee also will support this non-controversial settlement and that you'll encourage swift passage of the legislation before you.

I will be happy to answer any questions you may have.